

## Taft's Message to Congress

### Sends Special Document to Senate and House of Representatives.

#### SUBMITS A LENGTHY ADDRESS ON INTERSTATE COMMERCE COMMISSION AND ANTI-TRUST LAW.

#### Recommends the Establishment of a United States Court of Commerce to Help Enforce the Law.

By Associated Press  
WASHINGTON, Jan. 7.—Following is the text of the president's special message on the interstate commerce and anti-trust laws, submitted in both houses of congress today:

To the Senate and House of Representatives:

I withheld from my annual message a discussion of needed legislation under the authority which congress has to regulate commerce between the states and with foreign countries and said that I would bring this subject matter to your attention late in the session. Accordingly I beg to submit to you certain recommendations as to the amendments to the interstate commerce law and certain considerations arising out of the operations of the anti-trust law, suggesting the wisdom of federal incorporation of industrial companies.

**Interstate Commerce Law.**

In the annual report of the interstate commerce commission of the year 1908, attention is called to the fact that, between July 1, 1908, and the close of that year, sixteen suits have been begun to set aside orders of the commission (besides one commenced before that date) and that few orders of much consequence had been permitted to go without protest; that the questions presented by these various suits were fundamental, as the constitutionality of the act itself was in issue, and the right of congress to delegate to any tribunal authority to establish an interstate rate was denied; but that, perhaps, the most serious practical question raised concerned the extent of the right of the courts to review the orders of the commission; and it was pointed out that, if the contention of the carriers in this latter respect alone was sustained, but little progress had been made in the Hepburn act toward the effective regulation of interstate transportation charges. In twelve of the cases referred to, it was stated, preliminary injunctions were prayed for, being granted in six and refused in six.

"It has from the first been well understood," says the commission, "that the success of the present act as a regulating measure depended largely upon the facility with which temporary injunctions could be obtained. If a railroad company, by mere allegation, in its bill of complaint, supported by ex parte affidavits, can overturn the result of days of patient investigation, no very satisfactory result can be expected. The railroads lose nothing by these proceedings, since, if they fail, it can only be required to establish the rate and to pay the shippers the difference between the higher rate collected and the rate which is finally held to be reasonable. In point of fact, it usually profits, because it can seldom be required to return more than a fraction of the excess charges collected."

In its report of the year 1909, the commission shows that, of the seventeen referred to in its 1908 report, only one had been decided by the supreme court of the United States, although five other cases had been argued and submitted to that tribunal in October, 1909.

Of course, every carrier affected by an order of the commission has a constitutional right to appeal to a federal court to protect it from

the enforcement of an order which it may show to be prima facie confiscatory or unjustly discriminatory in its effects, and, as this application may be made to a court in any district of the United States, not only does it delay result in the enforcement of the order, but great uncertainty is caused by contrariety of decision.

The question presented by these applications are too often technical in their character and require a knowledge of the business and the mastery of a great volume of conflicting evidence which is tedious to examine and troublesome to comprehend. It would not be proper to attempt to deprive any corporation of the right to the review by a court of any order or any decree, which, if undisturbed, would rob it of a reasonable return upon its investment or would subject it to burdens which would unjustly discriminate against it and in favor of other carriers similarly situated. What is, however, of supreme importance, is that the decision of such questions shall be as speedy as the nature of the circumstances will admit and that a uniformity of decision be secured so as to bring about an effective, systematic and scientific enforcement of the commerce law, rather than conflicting decisions and uncertainty of final result.

For this purpose, I recommend the establishment of a court of the United States composed of five judges designated for such purpose from among the circuit court judges of the United States, to be known as the "United States Court of Commerce," which court shall be clothed with exclusive original jurisdiction over the following classes of cases:

(1) All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of an order of the interstate commerce commission, other than for the payment of money.

(2) All cases brought to enjoin, set aside, annul or suspend any order or relinquishment of the interstate commerce commission.

(3) All such cases as, under section 3 of the act of February, 19, 1903, known as the "Elkins act," are authorized to be maintained in a circuit court of the United States.

(4) All such mandamus proceedings as, under the provisions of section 20 of Section 23, of the interstate commerce law, are authorized to be maintained in a circuit court of the United States.

Reasons specially analogous to those which induced the congress to create the court of customs appeals by the provisions in the tariff act of August 5, 1909, may be urged in support of the creation of the commerce court.

In order to provide a sufficient number of judges to enable this court to be constituted, it will be necessary to authorize the appointment of five additional circuit judges, who, for the purpose of appointment, might be distributed to those circuits where there is at the present time the largest volume of business, such as the second, third, fourth, seventh and eighth circuits.

The act should empower the chief justice, at any time when the business of the court of commerce

does not require the services of all the judges, to re-assign the judges designated to that court to the circuits to which they respectively belong; and it should also provide for payment to such judges while sitting by assignment in the court of commerce of such additional amount as is necessary to bring their annual compensation up to \$10,000. The regular sessions of such courts should be held at the capital, but it should be empowered to hold sessions in different parts of the United States if found desirable; and its orders and judgments should be final, subject only to review by the supreme court of the United States with the provision that the operation of the decree appealed from shall not be stayed unless the supreme court shall so order.

The commerce court should be empowered in its discretion to restrain or suspend the operation of an order of the interstate commerce commission under review, pending the final hearing and determination of the proceeding, but no such restraining order should be made except upon notice and after hearing, unless in cases where irreparable damage would otherwise ensue to the petitioner. A judge of that court might be empowered to allow a stay of the commission's order for a period of not more than sixty days, but pending application to the court for its order or injunction, then only where his order shall contain a specific finding based upon the evidence, submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner, specifying the nature of the damage.

In view of the complete control over rate-making and other practices of interstate carriers established by the acts of congress and as recommended in this communication, I see no reason why agreements between carriers, subject to the act, specifying the classification of freight and the rates, fares and charges for transportation of passengers and freight which they may agree to establish, should not be permitted, provided copies of such agreements be properly filed with the commission, but subject to all the provisions of the interstate commerce act and subject to the right of any parties to such agreement to cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the commission.

Much complaint is made by shippers over the state of the law under which they are held bound to know the legal rate applicable to any proposed shipment, without, as a matter of fact, having any certain means of actually ascertaining such rate. It has been suggested that, to meet this grievance, carriers should be required, upon application by a shipper, to quote the legal rate in writing, and that the shipper should be protected in acting upon the rate thus quoted; but the objection to this suggestion is that it would afford a much too easy method of giving to favored shippers unreasonable preferences and rebates.

I think that the law should provide that a carrier, upon written request by an intending shipper, should quote in writing the rate or charge applicable to the proposed shipment under any schedule or tariffs to which the carrier is a party, and that, if the party making such request suffer damage in consequence of either refusal or

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#### SEARCHERS FIND BODY OF ROBBERS IN TUNNEL

(By Associated Press.)  
NEW YORK, Jan. 7.—Digging all day yesterday afternoon, last night and most of the day, searchers found the body of Isaac Finkelstein twelve feet below the surface of the street this afternoon in a tunnel by which it is supposed he hoped to reach the vaults of an East Side branch of the Fourteenth street bank, and jewelry house next door.

#### MAYOR-ELECT MAKES PUBLIC HIS APPOINTMENTS

By Associated Press  
SAN FRANCISCO, Jan. 7.—Mayor-elect P. H. McCarthy, candidate of the Union Labor party, at the recent municipal election, who takes office tomorrow, has announced the appointments of the various boards of commissioners. The men were selected by McCarthy from the Democratic and union labor ranks, and were his ardent supporters in the campaign. The mayor-elect stated he had appointed men in each case whose party affiliations were the same as those of the retiring commissioners.

Among the appointments are: Police commissioner, Harry P. Flannery; board of public works, Michael Casey; secretary to the mayor, Elmer C. Leffingwell. Flannery is a prominent saloon keeper of this city, Casey was formerly president of the Teamsters' union, while Leffingwell is a former newspaper man and was secretary of the board of education during the Schmitz administration. McCarthy declined to discuss the probability of the removal of Chief of Police Cook and the appointment of a new head of the police department.

#### DEMOCRATS IN SAN FRANCISCO FEELING GAY

By Associated Press  
SAN FRANCISCO, Jan. 7.—While the speakers engaged in heated arguments and charges of dishonesty of purpose was freely hurled at the opposing political parties in conference today and tonight, the democratic legislatures and editors of the state resulted in no action beyond the appointment of a committee to draft an open letter to the public, conveying the democratic arguments and allegations against the republican theories and practice. The state central committee will convene tomorrow and it is hinted the party's standard-bearer at the coming state election will be named.

The new democratic paper, it is stated, will be ready for publication within six weeks when the needed equipment arrives.

#### BRIEF SERVICES FOR DEAD FINANCIER

By Associated Press  
SAN FRANCISCO, Jan. 7.—Following the brief funeral services at the Millbrae country home of the late D. O. Mills, the body of the dead financier was placed on a special train that left for the East at 5:50 this afternoon. Ogden Mills and Mrs. Whitelaw Reid accompanied the body.

## TAFT DISMISSES GIFFORD PINCHOT

### Antagonistic Attitude of Chief Forester Leads to Dismissal From Government Service.

By Associated Press  
WASHINGTON, Jan. 7.—Gifford Pinchot, chief forester, and an intimate friend of Roosevelt, was dismissed tonight from the service of the United States by President Taft for insubordination. Associate Forester Overton W. Price, and assistant law officer, Alexander C. Shaw, Pinchot's immediate assistants in the forestry bureau, followed their chief out of the government employ. The president is thoroughly indignant over the action of Pinchot in inducing Senator Dolliver to read the letter from him in the senate yesterday and would not listen to advice that the forester's violation of the executive orders be overlooked pending inquiry by congress. Taft declared the dignity of the presidential office was being attacked and he would be unfaithful to his trust if he submitted any longer. Taft undoubtedly realized what the dismissal of Pinchot means politically. He has been convinced for some time that the so called "insurgents" and other critics of the administration had enlisted the services of Pinchot, thus practically defying him to dismiss the chief forester from office. The latter's letter yesterday, few doubt here, was written for the purpose of "putting it square up to the president."

The political observers in Washington declare the situation created by today's developments to be the most tense in years. What the outcome will be none can prophesy. In the house of representatives Speaker Cannon lost his first fight to the insurgents, who, combining with Democrats, caused to be adopted an amendment to the Ballinger-Pinchot inquiry, so as to take from the speaker the power to appoint house members on the joint special committee of investigation. The victory was won by a margin of three votes. Three republicans, not classed as "insurgents," but who profess friendship for Pinchot, voted with the insurgents, and democrats for the adoption which calls for the selection of house investigators by election from the floor.

The cabinet was in a special session practically the entire afternoon, following the regular morning session. Ballinger was cognizant of the action about to be taken and remained away from the afternoon sitting. Following the night session the president made public a letter he had written to Pinchot notifying him his usefulness as a public servant under the present

administration was at an end. Secretary of Agriculture Wilson, Pinchot's immediate superior, appeared as one of the forester's chief accusers. He told Taft he advised Pinchot not to send the letter to Dolliver, and that Pinchot had told him he such a letter in mind, if he "could induce Dolliver to read it on the day the president's special message transmitting to the attorney general the exoneration of Secretary Ballinger, was to be presented to the senate."

It was this story of Pinchot's, apparently calculated insubordination, that aroused the president's keenest resentment. Taft accused Pinchot of having taken his stand against Ballinger wholly upon the evidence adduced by Glavis without regard of the evidence on the other side on file in the interior department.

Pinchot received tonight the president's letter and Secretary Wilson's preemptory note of dismissal but nothing about his demeanor indicated that he was surprised, distressed, or either. When seen tonight he said he had nothing to say.

The dismissal of the principal officers of the forest service will not divert or delay the congressional investigation, and one of the subjects debated tonight was the question whether the dismissal will rob the investigation of much public interest, or make it all the more sensational than before.

Friends of the administration hold the former view, while on the other hand, the friends of Pinchot have for weeks been declaring the president "wouldn't dare dismiss Pinchot," that it would cause a breach between Taft and Roosevelt and that it would cause such a split in the republican party never seen in years. Friends of the president said tonight, however, that the actual dismissal of Pinchot could add nothing to the embarrassment of the administration. On the fact that the party is split all the republicans regard the situation as serious.

Party leaders in the house and senate declare the controversy and summary action of the president will surely lead to harsh words in congress and much bitterness in feeling throughout the country.

They admit the president could not with dignity have taken any other course and that Pinchot had "defied the lightning" and that there was nothing otherwise for the lightning to do.

#### AMERICANS WERE KILLED ILLEGALLY BY ZELAYA

By Associated Press  
WASHINGTON, Jan. 7.—President Madriz of Nicaragua in a message received by the state department, declared the resentment shown by the government and people of the United States, because of the execution of Groce and Cannon, American citizens, was justified. He declared the deed to have been illegal. This expression from Madriz may prove of great significance. It is taken here to mean the possible demand upon Mexico for the extradition of Zelaya, by whose orders Groce and Cannon were executed.

Something to sell? Try the Bonanza.

#### TRAGIC DEATH OF PEACE ENVOY IN NICARAGUA

(By Associated Press.)  
BLUEFIELDS, Jan. 7.—General Pedro Andreas Fornas Diaz, who started yesterday for Managua to treat for peace with Madriz, met with a tragic end last night on the Greytown bar. The canoe in which he attempted to make the landing was caught by a gigantic wave and broke amidships. Diaz disappeared in the sea.

#### WOLGAST-MEMISC BOUT A DRAW

By Associated Press  
LOS ANGELES, Jan. 7.—Ad Wolgast, who is matched to fight Nelson in February, fought a ten round draw with George Memisc tonight.